

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 2

IRVING PLAZA CONCERTS, INC.
Employer

and

Case No. 2-RC-22119

Theatrical Protective Local No. 1,
I.A.T.S.E., AFL-CIO,
Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held before Wilfredo Perez, a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2. Upon the entire record¹ in this proceeding, the undersigned finds that:

1. The Hearing Officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. Irving Plaza Concert Inc., herein the Employer, a private corporation, is

in the business of booking, showing and producing concerts and shows in a club venue. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of \$1,000,000 and purchases and receives at its facility located in New York City supplies and materials valued in excess of \$50,000 from suppliers located outside the State of New York. Based upon the record and the stipulations of the parties, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Theatrical Protective Union, Local No. 1, I.A.T.S.E., AFL-CIO, herein the Petitioner, is a labor organization within the meaning of the Section 2(5) of the Act.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 2(6) and (7) of the Act.

5. As amended at the hearing,² the Petitioner seeks an election to represent a unit comprised of:

All full-time and regular part-time stagehands including those employed in the job titles of sound, lighting, monitor, and front of house engineers excluding all other employees, the video technicians, supervisors, managerial employees and guards as defined in the Act.³

The Employer contends that the instant petition should be dismissed because the unit sought by Petitioner fails to include other employees who share

¹ Briefs were filed by the counsel for the Employer and Petitioner and they were duly considered.

² Petitioner originally sought to represent video technicians employed by the Employer.

a community of interest with the stagehands. The Employer, contrary to the Petitioner, contends any unit found to be appropriate must include the video technicians as well as the show crew employees.

The Employer operates a club with an audience capacity of 1100 located on the corner of Irving Plaza and East 15th Street, New York, New York. The Club is primarily used for the production of rock concerts by its management. The Employer also produces a Swing Dance event every Sunday evening. On occasion, private parties have also been held at the club. The Employer's facility consists of three floors and a basement. Its administrative offices are located in the basement, while the main entrance to the lobby area is located on the first floor. The stage and audience viewing areas are located on the second floor and the sound booth and monitor areas are located on the third floor.

Annually, the Employer produces approximately 180-200 concerts as well as hosting some 40 to 50 non-concert events. Concerts are normally held in the evenings and in most cases consist of two separate performances. Each show lasts approximately five hours. Approximately 20 to 25 percent of the concerts booked by the Employer are repeated on more than one evening.

The Employer employs stagehands to perform the technical work at all concert and non-concert events. The parties use the term stagehand to apply to various classifications of employees, including the loaders, sound engineers (the front of house and monitor engineers), and the lighting director. The Employer also employs what it calls its non-show crew for each concert event. The non-

³ In the event that the petitioned-for-unit is determined not to be an appropriate unit, Petitioner has not agreed to proceed to an election in whatever unit is determined appropriate.

show crew consists of the box office employees, the ticket takers, hospitality employee, guest list employee, pit crew and doormen. In addition to the above two categories of employees, the Employer also employs Video technicians who are employed by the Employer to monitor the video system at both concert and non-concert events when the occasion arises. The record does not reflect how frequently video is used at its facility, but it appears to be used frequently but not universally.

William Brusca, herein referred to as Brusca, is the Employer's President and General Manager. Jeff Webster, herein referred to as Webster, is the Employer's Production Manager and Mike Gallagher, herein referred to as Gallagher is the Night Manager. Although Brusca supervises the overall operation of the club, Webster is responsible for the production of each event. Webster coordinates the required work in order to produce each event. Specifically, he hires the number of stagehands needed for each event and supervises the entire staff, including stagehands and video technicians throughout every stage of the production. Webster also supervises the non-show crew, except that Gallagher supervises them during the performance of the show.

For each concert and non-concert event, the Employer hires stagehands to perform the technical functions, such as working the Employer's sound and lighting systems. If there is a video segment to a show, a video technician will also be hired. Depending on the size of the show, one or as many as ten stagehands may be hired. The stagehands and video technicians are hired from

a list maintained by Webster. This list contains the names of stagehands and technicians who have worked for the Employer on a regular basis. Once Webster determines how many stagehands and video technicians are needed to produce an event, he contacts the video technicians on his list. If the video technicians are available, Webster hires them. There are approximately 60 names on Webster's list, although not everyone works on each show.

The stagehands unload the band's equipment from the trucks, bring the band's gear into the club and assist in setting up the gear on the stage. The front of house engineer and the monitor engineer handle the cabling of equipment and instruments and mix the sound for the bands. The front of house engineer, who works in the sound booth, sets up the speakers intended for the audience, while the monitor engineer, who works in a loft located above stage right, sets up and monitors the speakers intended for the band members. At 5:00PM, when the club's noise restriction is lifted, the stagehands and sound engineers conduct a sound check of the equipment to be used for the concert. The front of house engineer and the monitor engineer are in constant communication with each other through a "Clear COM" headset.

The lighting engineer, also known as the lighting designer, monitors the lighting system by performing various technical duties, such as hanging signage with the bands, jelling lights, hanging lights and by programming the lighting equipment. The lighting engineer will also load in and out the equipment and run the lights during the show from the sound booth.

Any of the stagehands are used to set up the barricades located in front of the stage. In between acts, stagehands are responsible for changing the set and moving equipment on and off the stage. The stagehands arrive to work as early as 9:00 AM to load in the equipment and leave work as late as 4:00 AM, the next day. During these hours, a dinner break is provided to the stagehands. The stagehands primarily perform their duties in the loading area located on E. 15th street, and on the second and third floors. While performing their duties, the stagehands interact with each other and with the band members and crew. Since stagehands are required to have technical experience, they can assist each other or substitute for one another. The Employer pays stagehands, other than loaders, \$200 for a 12-hour shift and \$20.00 for each additional hour. The Employer pays the loaders who are brought in to load in the equipment \$75 and \$50.00 to the loaders who are engaged to perform the loading out of the equipment. The loaders will work fewer hours than the other stagehands.

The video technician coordinates with the performing band or artist the type of audio and /or video that will be played in between acts and during the show. Thereafter, the video technician operates the soundboard in those situations where if the band wants certain CDs to be played with the video. Otherwise he or she operates just the video without sound. The video technician also maintains the Employer's video equipment and monitors the camera that is set up in the pit crew. The video technician arrives to the club approximately one hour before the doors open. If the band scheduled to perform plans to bring its own video equipment to the show, the video technician arrives early to assist with

the load in of that equipment. Otherwise the video technician does not participate in the load in process and just sets up the Employer's video equipment. The video technician works in the sound booth together with the lighting and sound engineers. The Employer pays the video technician \$50.00 for a five hour shift and \$15.00 for each additional hour.

All stagehands must sign in when they arrive to work. Since June 1999, the Employer offers medical benefits to the stagehands that have worked an average of 36-hours per week over a 52-week period. Currently only one stagehand is eligible to receive these benefits.

On "Swing Sundays", the Employer employs at least one stagehand to operate the sound and lighting systems. On days when there is no scheduled event, the Employer may have one stagehand come to the club in order to monitor the Employer's equipment.

As noted above, the Petitioner argues that the stagehands employed by the Employer constitute an appropriate unit since they share a community of interest among themselves. The Employer, however, contends that the video technician and stagehand functions are integral to and overlapping components of a small work force that is responsible for producing an event at the club. Therefore, it contends that video technicians should be included in any unit found to be appropriate.

In determining whether a group of employees constitute an appropriate unit, the Board considers whether the employees share a community of interest in their terms and conditions of employment. To determine whether a community

of interest exists, the following factors are considered: the degree of functional integration, common supervision, the nature of the employees' skills and functions, contact and interchangeability among employees, work location, general working conditions, fringe benefits and history of bargaining and extent of organization. *Vincent M. Ippolito, Inc.*, 313 NLRB 715,717 (1994) citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). While the Board has long recognized that stagehands normally will be found to have a separate and identifiable community of interest apart from other employees by virtue of the specialized nature of their job functions (See *Charlotte Amphitheater Corp. d/b/a Blockbuster Pavilion*, 314 NLRB 129 (1994); *Six Flags Over Georgia*, 215 NLRB 809 (1974); and *Circo Resorts, Inc., d/b/a Circus Circus*, 244 NLRB 880 (1979)), it has also recognized that in certain circumstances, other classifications may be included in a unit with stagehands. *Broadway Catering Corp. d/b/a Studio 54*, 260 NLRB 1200 (1982).

For the reasons set forth below, I find that the video technicians share a significant community of interest with the stagehands and therefore should be included in the unit found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) the Act. The record reflects that the nature of the work performed by the video technicians requires specific technical skills and expertise related to the sound, video and lighting functions performed at the Employer's club. The record establishes that the video technicians are employed during those rock concerts presented by the Employer in which video is used as part of the artist's performance or during periods between acts. In those

instances, the video technician works to create the desired effect in the same manner and under the same conditions as the stage crew. In this regard, the video technicians works elbow-to-elbow with the lighting and sound engineers in the sound booth during the production. They are hired in the same manner as the stage crew, and the stage crew and video technicians are all solely supervised directly by Webster. Although the services of the video technicians are needed for fewer hours than the stage crew and are hired at a slightly lesser hourly rate but higher extra hour rate, video technicians are part of the overall production and staging of the show. As the video technicians are functionally integrated in the staging of the performance, work closely with the stagehands and are commonly supervised, they are appropriately part of the stagehand unit. In *Broadway Catering Corp.*, supra, the Board noted that the traditional stagehand unit is inappropriate in circumstances where it excludes a group that is an integral part of the presentation of the show. In those circumstances, the non-stagehands do not possess a separate and distinct identity. The Board made specific reference to the various component parts that comprised the show, including lights, music, props, and involvement of the customers, in determining that all those directly involved in the presentation of the show were part of the unit rather than just the traditional stagehands. When video is used it is done so to enhance and be part of the overall presentation and the video technicians are essential to the performance. Thus, I conclude that the video technicians share a strong community of interest with the stagehands and must be included in the unit with them.

As the Petitioner indicated⁴ that it would not participate in an election in any unit other than the unit contained in its amended petition, it is unnecessary for me to decide the issue of whether or not the non-show crew shares a community of interest with the stagehands. Accordingly, it appears that an election is not warranted in the unit found appropriate herein. Further, as an election is not appropriately ordered in these circumstances, it is unnecessary for me to determine whether the eligibility formula proposed by the Petitioner or the formula proposed by the Employer is to be utilized. Accordingly, IT HEREBY IS ORDERED, that the petition filed by the Petitioner be, and it hereby is, dismissed.⁵

Dated at New York, New York
December 1, 1999

(s) Daniel Silverman
Daniel Silverman
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Rm. 3614
New York, New York 10278

⁴ At the hearing Petitioner stated that it would not proceed to an election that included individuals that are represented by a sister local. According to the Petitioner, it does not represent video technicians. Rather, its sister locals, I.A.S.T.E locals 600 and 306 represent video technicians throughout the entertainment industry.

⁵ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of the Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 Fourteenth Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 15, 1999**.

Code - 440-1760-4820-5000